

FILED
AUG 16 2016
CAB

**BEFORE THE BOARD OF HEALING ARTS
OF THE STATE OF KANSAS**

KS State Board of Healing Arts

In the Matter of)	
)	Docket No.: 15-HA00069
Claude A. Brachfeld, M.D.)	OAH No.: 15HA0013
Kansas License No. 04-30230)	

CONSENT ORDER

COMES NOW, the Kansas State Board of Healing Arts, ("Board"), by and through Jane E. Weiler, Associate Litigation Counsel, and Susan R. Gering, Associate Litigation Counsel ("Petitioner"), and Claude A. Brachfeld, M.D. ("Licensee"), by and through his counsel, Brian C. Wright, Wright Law Office, Chartered, and move the Board for approval of a Consent Order affecting Licensee's license to practice medicine and surgery in the State of Kansas. The Parties stipulate and agree to the following:

1. Licensee's last known mailing address to the Board is: **Confidential**
Denver, Colorado 80231.
2. Licensee is or has been entitled to engage in the practice of medicine and surgery in the State of Kansas, having been issued License No. 04-30230 on approximately August 23, 2003. Licensee's license is active.
3. The Board is the sole and exclusive administrative agency in the State of Kansas authorized to regulate the practice of the healing arts, specifically the practice of medicine and surgery. K.S.A. 65-2801 *et seq.*, and K.S.A. 65-2869.
4. This Consent Order and the filing of such document are in accordance with applicable law and the Board has jurisdiction to enter into the Consent Order as provided

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by K.S.A. 77-505 and 65-2838. Upon approval, these stipulations shall constitute the findings of the Board, and this Consent Order shall constitute the Board's Final Order.

5. The Kansas Healing Arts Act is constitutional on its face and as applied in the case. Licensee agrees that, in considering this matter, the Board is not acting beyond its jurisdiction as provided by law.

6. Licensee voluntarily and knowingly waives his right to a hearing. Licensee voluntarily and knowingly waives his right to present a defense by oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct cross-examination of witnesses. Licensee voluntarily and knowingly agrees to waive all possible substantive and procedural motions and defenses that could be raised if an administrative hearing were held.

7. The terms and conditions of the Consent Order are entered into between the undersigned parties and are submitted for the purpose of allowing these terms and conditions to become an Order of the Board. This Consent Order shall not be binding on the Board until an authorized signature is affixed at the end of this document. Licensee specifically acknowledges that counsel for the Board is not authorized to sign this Consent Order on behalf of the Board.

8. The Board has received information and investigated the same, and has reason to believe that there may be grounds to take action with respect to Licensee's license under the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

9. This Consent Order incorporates herein by reference the facts as stated in the Petition that was filed on February 20, 2015, except for paragraphs 20, 21b., 21d., 21e., Count II. Exhibit 1, Petition in the Matter of Claude A. Brachfeld, M.D. 15-HA00069.

10. While admitting no wrongdoing, Licensee acknowledges that if formal hearing proceedings were conducted and Licensee presented no exhibits, witnesses, or other evidence, the Board has sufficient evidence to prove that Licensee has violated the Kansas Healing Arts Act with respect to the above allegations. Licensee further waives his right to dispute or otherwise contest the allegations contained in the above paragraphs in any further proceeding before this Board.

11. Licensee's acts, if proven, constitute unprofessional conduct and/or dishonorable conduct as set forth in K.S.A. 65-2836(b).

12. Licensee, if proven, has violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(a)(2), in that Licensee has committed repeated instances involving a failure to adhere to the applicable standard of care to a degree which constitutes at least ordinary negligence, as determined by the Board;

13. Licensee, if proven, has violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(12) in that Licensee's conduct relating to Patient 3 is likely to harm the public;

14. Licensee, if proven, has violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(21), in that Licensee performed an unnecessary service which had no legitimate medical purpose;

15. Licensee, if proven, has violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(24), in that Licensee has had a repeated failure to practice the healing arts with that level of care, skill and treatment which is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

16. Licensee, if proven, has violated K.S.A. 65-2836(b), as further defined in K.S.A. 65-2837(b)(25), in that Licensee failed to keep written medical records that accurately

reflect the services rendered to Patient 1, including patient histories, pertinent findings, examination results and test results;

17. Licensee, if proven, has violated K.A.R. 100-24-1 and, as such, also violated K.S.A. 65-2836(k) by failing to meet the minimum requirements for an adequate patient record for Patient 1; and

18. Licensee, if proven, has violated K.S.A. 65-2836(s) in that sanctions and/or disciplinary actions have been taken against Licensee by a peer review committee, health care facility, a governmental agency or department or a professional association or society for acts or conduct similar to acts or conduct which would constitute ground for disciplinary action under this section.

19. Pursuant to K.S.A. 65-2836, the Board may revoke, suspend, limit, censure or place under probationary conditions Licensee's license and pursuant to K.S.A. 65-2863a the Board has the authority to impose administrative fines for violations of the Kansas Healing Arts Act.

20. According to K.S.A.65-2838(b) and K.S.A. 77-505, the Board has authority to enter into this Consent Order without the necessity of proceeding to a formal hearing.

21. All pending investigation materials in KSBHA Investigation Numbers 11-00603; 13-00337; and 14-00373 regarding Licensee were fully reviewed and considered by the Board members who serve on the Board's Disciplinary Panel No. 28. Disciplinary Panel No. 28 authorized and directed Board counsel to seek settlement of this matter with the provisions contained in this Consent Order.

22. Licensee further understands and agrees that if the Board finds, after due written notice and an opportunity for a hearing, that Licensee has failed to comply with any of the

terms of this Consent Order, the Board may immediately impose any sanction provided for by law, including but not limited to suspension or revocation of Licensee's license to practice medicine and surgery in the State of Kansas. Licensee hereby expressly understands and agrees that, at any such hearing, the sole issue shall be whether or not Licensee has failed to comply with any of the terms or conditions set forth in this Consent Order. The Board acknowledges that at any such hearing, Licensee retains the right to confront and examine all witnesses, present evidence, testify on his own behalf, contest the allegations, present oral argument, appeal to the courts, and all other rights set forth in the Kansas Administrative Procedures Act, K.S.A. 77-501 *et seq.*, and the Kansas Healing Arts Act, K.S.A. 65-2801 *et seq.*

23. Nothing in this Consent Order shall be construed to deny the Board jurisdiction to investigate alleged violations of the Kansas Healing Arts Act, or to investigate complaints received under the Risk Management Law, K.S.A. 65-4921 *et seq.*, that are known or unknown and are not covered under this Consent Order, or to initiate formal proceedings based upon known or unknown allegations of violations of the Kansas Healing Arts Act.

24. Licensee hereby releases the Board, its individual members (in their official and personal capacity), attorneys, employees and agents, hereinafter collectively referred to as "Releasees", from any and all claims, including but not limited to those alleged damages, actions, liabilities, both administrative and civil, including the Kansas Judicial Review Act, K.S.A. 77-601 *et seq.* arising out of the investigation and acts leading to the execution of this Consent Order. This release shall forever discharge the Releasees of any and all claims or demands of every kind and nature that Licensee has claimed to have had at the time of this release or might have had, either known or unknown, suspected or unsuspected, and

Licensee shall not commence to prosecute, cause or permit to be prosecuted, any action or proceeding of any description against the Releasees.

25. Licensee further understands and agrees that upon signature by Licensee, this document shall be deemed a public record and shall be reported to any entities authorized to receive disclosure of the Consent Order.

26. This Consent Order, when signed by both parties, constitutes the entire agreement between the parties and may only be modified or amended by a subsequent document executed in the same manner by the parties.

27. Licensee agrees that all information maintained by the Board pertaining to the nature and result of any complaint and/or investigation may be fully disclosed to and considered by the Board in conjunction with the presentation of any offer of settlement, even if Licensee is not present. Licensee further acknowledges that the Board may conduct further inquiry as it deems necessary before the complete or partial acceptance or rejection of any offer of settlement.

28. Licensee, by signature to this document, waives any objection to the participation of the Board members, including the Disciplinary Panel and General Counsel, in the consideration of this offer of settlement and agrees not to seek the disqualification or recusal of any Board member or General Counsel in any future proceedings on the basis that the Board member or General Counsel has received investigative information from any source which otherwise may not be admissible or admitted as evidence.

29. Licensee acknowledges that he has read this Consent Order and fully understands the contents.

30. Licensee acknowledges that this Consent Order has been entered into freely and voluntarily.

31. All correspondence or communication between Licensee and the Board relating to the Consent Order shall be by certified mail addressed to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A,
Topeka, Kansas 66612

32. Licensee shall obey all federal, state and local laws and rules governing the practice of medicine and surgery in the State of Kansas that may be in place at the time of execution of the Consent Order or may become effective subsequent to the execution of this document.

33. Upon execution of this Consent Order by affixing a Board authorized signature below, the provisions of this Consent Order shall become an Order under K.S.A. 65-2838. This Consent Order shall constitute the Board's Order when filed with the office of the Executive Director for the Board and no further Order is required.

34. Licensee shall immediately notify the Compliance Coordinator of any citation, arrest or charge filed against him or of any conviction for any traffic or criminal offenses, excluding minor traffic infractions.

35. Licensee shall immediately notify the Board or its designee of any complaint filed, or investigation opened, by the proper licensing authority of another state, territory, District of Columbia, or other country, or by a peer review body, a health care facility, a professional association or society, or by a governmental agency.

36. Licensee shall at all times keep Board staff informed of his current practice locations addresses and telephone numbers. Licensee shall provide the above information in writing to the Board within ten (10) days of any such change.

37. This Consent Order constitutes **public disciplinary action**.

38. The Board may consider all aspects of this Consent Order in any future matter regarding Licensee.

39. In lieu of conducting a formal proceeding, Licensee, by signature affixed to this Consent Order, hereby voluntarily agrees to the following disciplinary action against his license to engage in the practice of medicine and surgery:

PUBLIC CENSURE

40. Licensee is publicly censured for violating the Kansas Healing Arts Act.

PROBATION: EDUCATION

41. Licensee shall complete a professional course in ethics within one (1) year from the date of the approval of this Consent Order. Licensee shall complete one (1) of the following courses:

- a. Licensee shall enter into, complete, and pass all five (5) topic areas of the EBAS Essay Examination that is put on by Ethics and Boundaries Assessment Services, LLC on or before August 12, 2017, unless otherwise approved by the Board. The score report of any and all examination attempts by Licensee, regardless of Licensee receiving a passing or failing score, shall be provided to the Board by Licensee within ten (10) business days of Licensee receiving the test result. The results shall be sent to:

Kansas State Board of Healing Arts

Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

- b. Licensee shall attend and successfully complete the Ethics and Boundaries Course (ProBE) Program presented by The Center for Personalized Education for Physicians (CPEP) on or before August 12, 2017, unless otherwise approved by the Board.
42. On or before October 31, 2016, Licensee shall notify the Compliance Coordinator in writing of the course and the date Licensee has registered to attend.
43. All foreseen and unforeseen expenses to complete the aforementioned program including travel, lodging, program fee, meals, etc., shall be at Licensee's own expense.
44. These hours shall be in addition to those continuing education hours required for renewal of licensure.
45. Upon the Board's receipt of proof of successful completion of one (1) of the above, this term of Licensee's Probation: Education shall be terminated.

FINE

46. As a term of Probation, Licensee agrees to pay a FINE in the amount of FIVE HUNDRED DOLLARS AND ZERO CENTS, (\$500.00).
47. Such fine shall be paid in the form of a Cashier's Check or Money Order to the "Kansas State Board of Healing Arts" in full on or before October 31, 2016.
48. All monetary payments to the Board relating to this Consent Order shall be mailed to the Board by certified mail addressed to:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A,

Topeka, Kansas 66612

BOARD COSTS

49. Licensee is hereby ordered to pay one half of the Board's COSTS in conducting this proceeding under the Kansas Administrative Procedure Act in the amount of \$31,516.72. The total of \$31,516.72 is due on or before August 12, 2017.

50. Licensee shall make all payments, which shall be in the form of cashier's check or money order, to the "Kansas State Board of Healing Arts" and send all payments to the attention of:

Kansas State Board of Healing Arts
Attn: Compliance Coordinator
800 SW Jackson, Lower Level-Suite A,
Topeka, Kansas 66612

IT IS THEREFORE ORDERED that the Consent Order and agreement of the parties contained herein is adopted by the Board as findings of fact, conclusions of law, and as a Final Order of the Board.

IT IS SO ORDERED on this 15 day of Aug, 2016.

**FOR THE KANSAS STATE
BOARD OF HEALING ARTS:**

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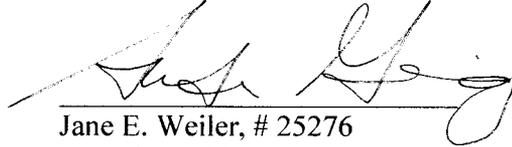

Kathleen Selzler Lippert
Executive Director

8/15/16
Date


Claude A. Brachfeld, M.D.
Licensee

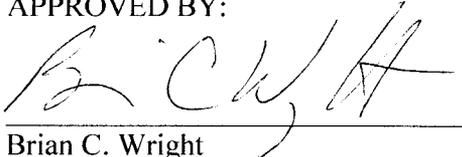
7/12/2016
Date

PREPARED AND APPROVED BY:



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Associate Litigation Counsel
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APPROVED BY:



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Attorney for Licensee

Consent Order
Claude A. Brachfeld, M.D.

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brian@bcwrightlaw.com

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a true and correct copy of the Consent Order by United States mail, postage prepaid, on this 16th day of August, 2016, to the following:

Claude A. Brachfeld, M.D.
Licensee
Confidential
Denver, Colorado 80231

Brian C. Wright
Attorney for Licensee
Wright Law Office, Chartered
4312 10th Street Place
Great Bend, Kansas 67530

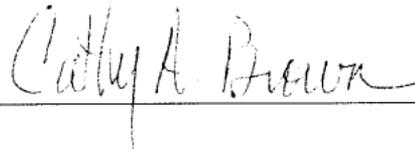
And the original was hand-filed with:

Kathleen Selzler Lippert
Executive Director
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

And a copy was hand-delivered to:

Jane E. Weiler
Associate Litigation Counsel
Susan R. Gering
Associate Litigation Counsel
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612

Compliance Coordinator
Kansas State Board of Healing Arts
800 SW Jackson, Lower Level-Suite A
Topeka, Kansas 66612


Cathy A. Brown

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